



CITY COUNCIL STAFF REPORT
MEETING DATE: OCTOBER 1, 2003

Agenda Item # 1

Prepared By:

Public Works Director

Submitted By:

City Manager

AQUATICS COMPLEX LEEDS CERTIFICATION

RECOMMENDED ACTION(S):

Information only, staff will report back to Council later during the construction period prior to deleting LEEDS certification.

EXECUTIVE SUMMARY:

At the Council meeting of September 24, 2003, City Council on the consent calendar approved a staff recommendation to proceed with obtaining the LEEDS rating designed for the Aquatics Complex, without actually applying for and receiving the certification. The staff report noted that the savings by not certifying could be between \$15,000 and \$25,000 and this was one of our potential value engineering cost reduction items.

Subsequent to the staff report being finalized for the September 24, 2003 meeting, staff learned that the actual estimated savings for not applying for LEEDS certification is only \$10,500 and that paperwork would not need to be prepared until much later during the construction phase of the project. Staff is now recommending therefore that we do not accept this as a change order deduction at this time, but instead wait and monitor the construction budget. Staff will monitor the magnitude of change orders and review the status of the budget contingency with Council at a later date to see if Council wishes to delete the LEEDS certification. Through the design process, we have already spent \$95,000 on architectural work towards attaining LEEDS certification and it certainly would be desirable and in conformance with our Council LEEDS policy to obtain certification.

FISCAL IMPACT: None at this time.



CITY COUNCIL STAFF REPORT
MEETING DATE: OCTOBER 1, 2003

**RESOLUTION OF INTENT TO VACATE A PORTION OF
BARRETT AVENUE AND SET TIME AND PLACE FOR
PUBLIC HEARING**

RECOMMENDED ACTION(S):

1. Approve the attached Resolution of Intent to vacate a portion of Barrett Avenue, thereby setting October 15, 2003 at 7:30pm in the Council Chambers as the time and place for the public hearing.
2. Direct the City Clerk to publish the Resolution of Intent as required by State Law.

EXECUTIVE SUMMARY:

The development of the Aquatics Center project requires that the City vacate a portion of Barrett Avenue. It is necessary to restrict through vehicular access to provide for a more "pedestrian friendly" entrance to the project and in the future to facilitate pedestrian access between the Aquatics and Sports Center. Staff is requesting vacation for roadway purposes only. Since there are existing and proposed underground utilities located within the right-of-way to be vacated, the City will be reserving a Public Utility Easement. The Planning Commission determined that this vacation is in conformance with the Circulation Element of the General Plan at their meeting of September 23, 2003. In addition, staff has reviewed this request with both the Police and Fire Departments and both departments are in agreement with the vacation. Staff recommends the adoption of the attached resolution setting a Public Hearing on the matter in accordance with State Law.

FISCAL IMPACT: None

Agenda Item # 2

Prepared By:

Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL DECLARING ITS INTENTION TO
VACATE A PORTION OF THE PUBLIC STREET KNOWN
AS BARRETT AVENUE AND SETTING TIME AND PLACE
FOR PUBLIC HEARING.**

WHEREAS, the Director of Public Works of the City of Morgan Hill has recommended that the hereinafter described public street segment is no longer needed for public roadway use; and

WHEREAS, the Director of Public Works has filed a plat and legal description with the City Clerk of the City of Morgan Hill showing said vacation;

WHEREAS, the City wants to vacate the portion shown and reserve a Public Utility Easement;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES
HEREBY RESOLVE AS FOLLOWS;**

SECTION 1: The City Council of the City of Morgan Hill declares its intention to proceed in accordance with the provisions of Part 3, Division 9 of the Streets and Highways Code of the State of California (commencing with §8300) pertaining to the vacation of public highways and easements to vacate and abandon a public street. Said portion of real property and the related public street are described in Exhibit "A" and shown on the map attached hereto as Exhibit "B", also attached hereto and incorporated herein by reference.

SECTION 2: The City Council may determine at the close of the public hearing that the public convenience, benefit and necessity no longer require the City to hold the above-described public street. The City Council may also find that the public convenience, benefit and necessity do require the reservation of a public utility easement in said property, with access thereto for maintenance of utilities.

SECTION 3: Reference is made to the maps and plans which are filed in the Office of the City Clerk of the City of Morgan Hill for further particulars as to the proposed vacation of the public street.

SECTION 4: A public hearing shall be held on the vacation of the public street on October 15, 2003 at 7:30 P.M. in the Council Chambers of the City of Morgan Hill at 17555 Peak Avenue, Morgan Hill, California. All persons interested in or objecting to the proposed vacation will be heard. Said hearing may be postponed or continued.

SECTION 5: The Director of Public Works is directed to post or cause to be posted at least fourteen (14) days before the day set for hearing not less than three (3) notices of vacation of a portion of Barrett Avenue, not more than three hundred (300) feet apart, conspicuously along the lines of said portion of street right-of-way wherein said right-of-way is proposed to be vacated, stating adoption of this Resolution and the time and place of the hearing herein called. Posting of a copy of this Resolution shall constitute the posting of the required notice.

SECTION 6: The City Clerk is directed to cause a copy of this Resolution to be published once each week for two (2) successive weeks in the official newspaper of the City of Morgan Hill within fifteen (15) days after adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 1st Day of October, 2003, by the following vote.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

☞ CERTIFICATION ☞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on October 1, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

DECLARATION OF POSTING RESOLUTION OF INTENTION TO VACATE PORTION OF A
CERTAIN PUBLIC STREET AND SETTING TIME AND PLACE FOR PUBLIC HEARING.

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA) SS

I, the undersigned say:

I am over the age of 18 years.

On the _____st day of October, 2003, I conspicuously posted Resolution No. _____ of the City Council of the City of Morgan Hill entitled RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING ITS INTENTION TO VACATE A PUBLIC STREET KNOWN AS BARRETT AVENUE, AND SETTING TIME AND PLACE FOR PUBLIC HEARING, a copy of which is attached.

Said Resolution was posted along the lines of said street, not more than three hundred (300) feet in distance apart. The actual number so posted along said street is three (3).

I declare under penalty of perjury that the foregoing is true and correct.

DATED: _____

Glenn Ritter
Project Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: October 1, 2003

ACCEPTANCE OF THE DOWNTOWN TRANSIT CENTER AT-GRADE PEDESTRIAN CROSSING PROJECT

RECOMMENDED ACTION(S):

1. Accept as complete the Downtown Transit Center At-Grade Pedestrian Crossing Project in the final amount of \$129,436.
2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY:

The contract for the Downtown Transit Center At-Grade Pedestrian Crossing Project was awarded to McGuire and Hester, by the City Council at their December 4, 2002 meeting in the amount of \$137,916. The project resulted in the construction and completion of an at-grade pedestrian railroad crossing connecting the Downtown Transit Center and Morgan Hill Park-N-Ride Facility.

In addition, the City of Morgan Hill paid UPRR \$361,309 for the required work by Union Pacific Railroad to complete this project.

The work has been completed in accordance with the plans and specifications.

FISCAL IMPACT:

The project was budgeted in the 2002-2003 RDA unappropriated fund balance. The allocated project construction cost including a 10% contingency was \$151,708. The contract was awarded in the amount of \$137,916 and the final contract price is \$129,436.

Agenda Item # 3

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION
CITY OF MORGAN HILL
Downtown Transit Center At-Grade Pedestrian Crossing Project

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 1st day of October, 2003, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to McGuire and Hester, on December 4, 2002, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on June 5, 2003, accepted by the City Council on October 1, 2003, and that the name of the surety on the contractor's bond for labor and materials on said project is National Fire Insurance Company of Hartford.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 20__.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date:



CITY COUNCIL STAFF REPORT

MEETING DATE: October 1, 2003

ACCEPTANCE OF SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT, PHASE II 2002-2003 PROJECT

RECOMMENDED ACTION(S):

1. Accept as complete the Sidewalk, Curb & Gutter Removal and Replacement, Phase II 2002-2003 Project in the final amount of \$61,253.
2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY:

The contract for the Sidewalk, Curb & Gutter Removal and Replacement, Phase II 2002-2003 Project was awarded to Monterey Peninsula Engineering, Inc., by the City Council at their June 4, 2003 meeting in the amount of \$58,000. The project resulted in the removal and replacement of 3360 SF of sidewalk, 245 LF of curb and gutter, 5 access ramps, 5 driveways, and Asphalt Concrete Patching.

The work has been completed in accordance with the plans and specifications.

FISCAL IMPACT:

This project is budgeted in the 2002-03 Street Maintenance Budget. The allocated project construction cost including a 10% contingency was \$63,800. The contract was awarded in the amount of \$58,000 and the final contract price is \$61,253.

Agenda Item # 4

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION
CITY OF MORGAN HILL
Sidewalk, Curb & Gutter Removal and Replacement, Phase II 2002-2003 Project

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 1st day of October, 2003, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to Monterey Peninsula Engineering, Inc., on June 4, 2003, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on August 12, 2003, accepted by the City Council on October 1, 2003, and that the name of the surety on the contractor's bond for labor and materials on said project is The Continental Insurance Company.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 2003.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date:



CITY COUNCIL STAFF REPORT

MEETING DATE: October 1, 2003

AUTHORIZE AGREEMENT TO INSTALL A FIBER OPTIC LINE TO THE NEW POLICE FACILITY

RECOMMENDED ACTION(S): Authorize the City Manager to; (1) prepare and execute an agreement, not to exceed \$35,000, to install fiber and two I-Net hubs to nearest City Hub for the new Police Facility and (2) approve up to a 15% increase (\$5,250) in the agreement amount for un-foreseen conditions.

EXECUTIVE SUMMARY:

As part of the development for the new Police Facility at 16200 Vineyard Boulevard, it is necessary to install fiber optic cable from the nearest existing City I-Net point. Charter Communications is the local firm that provides this service to the City. Staff has requested a proposal from Charter Communications for this work. Charter Communications identified that 2,025 feet of new conduit for the fiber must be installed from the nearest City I-Net point to the existing duct for the new police building. The cost of the conduit installation and new fiber cable is \$ 35,000. The 15% contingency is in case the conduit must be re-routed to miss some existing underground utilities. We won't know if the contingency is necessary until the design and engineering is complete. We need to start the process now in order to coincide with the Police Facility construction schedule.

With the Council's approval staff will prepare an agreement with Charter Communications to provide this work for approval by the City Manager.

FISCAL IMPACT:

The above amount is included in the fixture, furniture and equipment of the adopted project budget of \$8,900,000.00. No additional funding is required.

Agenda Item # 5

Prepared By:

Senior Proj. Mgr.

Approved By:

Chief of Police

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: October 1, 2003

Subdivision Application SD-03-06: Central-Central Park

RECOMMENDED ACTION(S): Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

EXECUTIVE SUMMARY: A request to approve a 39-lot subdivision for Phase VII of the Central Park project located on two parcels totaling 11.5 acres.

On November 20, 2002, the Council approved the current RPD for the 164 unit Central Park development. Phase VII of the project received 17 allocations for FY 2004-2005 and 22 allocations for FY 2005-2006.

Section 17.20.110 of the Subdivision Ordinance provides for City Council review of tentative maps which have been approved by the Planning Commission. The Council may schedule a hearing to reconsider the Commission action, or by taking no action, let the Commission's action of approval stand.

This application was reviewed by the Planning Commission at its September 9, 2003, meeting. The Commission voted 6-0, approving the request. The Planning Commission resolution, conditions of approval and subdivision map are attached. The staff report and minutes for the subdivision are attached to the development agreement request within this same agenda.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

Agenda Item # 6

Prepared By:

Associate Planner

Approved By:

**Director of Community
Development**

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: October 1, 2003

Agenda Item # 7

Prepared By:

Senior Planner

Approved By:

**Director of Community
Development**

Submitted By:

City Manager

**SUBDIVISION APPLICATION SD 03-07: SUNNYSIDE-QUAIL CREEK
DEVELOPMENT**

RECOMMENDED ACTION(S): Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

EXECUTIVE SUMMARY:

The applicant is requesting approval of a 22 lot subdivision of a 5.6-acre portion of a 15.7 acre parcel which will represent phase III of the Quail Creek project located on the north east corner of the intersection of Sunnyside Ave. and Watsonville Rd.

In March 2002, the City Council approved an RPD plan for the 15.7 acre Quail Creek project. The Quail Creek project first received building allocations in the 2000 MP competition. The developer has pulled building permits and is currently under construction on the first 20 units known as phase I of the project. Phase I improvements include the frontage along Watsonville Rd. and a portion of Sunnyside Ave.

In May 2002, the Planning Commission awarded another 12 allocations for FY 2003-04. The final map for Phase II (12 units) has been recorded but construction has not yet begun. The Phase II improvements include additional frontage improvements along Sunnyside Ave.

In May 2003, the Commission awarded 14 allocations for FY 2004-05 and 8 allocations for FY 2005-06. The Quail Creek project is now completely allocated.

The current 22 lot subdivision request represents phase III of the Quail Creek project. The subdivision map as submitted is in compliance with the RPD plan approved by the City Council in March 2002. The lot sizes and locations are each per the approved RPD.

This application was reviewed by the Planning Commission at their September 9 meeting, at which time the Commission voted 6-0, approving the request. The Planning Commission resolution, conditions of approval, and subdivision map are attached. The staff report for the subdivision is attached to the development agreement request within this same agenda.

FISCAL IMPACT: No budget adjustment required.



CITY COUNCIL STAFF REPORT
MEETING DATE: October 1, 2003

APPROVAL OF RESOLUTION TO IMPLEMENT THE PROVISIONS OF SECTION (414)(h)(2) OF THE INTERNAL REVENUE CODE WITH THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

RECOMMENDED ACTION:

Adopt Resolution.

EXECUTIVE SUMMARY:

City Council approved the Memorandum of Understanding with the Community Service Officers' Association for the period effective July 1, 2003 and ending June 30, 2005.

Article 8.10 of that current contract provides that the City will add the employer-paid employee CalPERS retirement contribution of seven (7%) percent to the base salary and then deduct that seven percent from employees' paychecks under the provisions of IRC (414)(h)(2). This provision is currently being used by members of the Police Officer's Association and all management employees.

CalPERS Administrative Division directs jurisdictions who have agreed to implement the provisions of IRC (414)(h)(2) to adopt a resolution stating their intention.

FISCAL IMPACT:

The fiscal impact for budget year 2003-04 was taken into consideration during contract negotiations and falls within the parameters set by City Council for those negotiations.

Agenda Item # 8

**Prepared/Approved
By:**

**Human Resources
Director**

Submitted By:

City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL TO IMPLEMENT THE PROVISIONS OF SECTION (414)(h)(2) OF THE INTERNAL REVENUE CODE WITH THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, the City of Morgan Hill has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

WHEREAS, the Board of Administration of the Public Employees' Retirement System adopted its resolution re section 414(h)(2) on September 18, 1985; and

WHEREAS, the Internal Revenue Service has stated in December 1985, that the implementation of the provisions of section 414(h)(2) IRC pursuant to the Resolution of the Board of Administration would satisfy the legal requirements of section 414(h)(2) IRC; and

WHEREAS, the City of Morgan Hill has determined that even though the implementation of the provisions of section 414(h)(2) IRC is not required by law, the tax benefit offered by section 414(h)(2) IRC should be provided to its employees who are members of the Public Employees' Retirement System:

NOW THEREFORE, BE IT RESOLVED:

- I. That the City of Morgan Hill will implement the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code section 20691 to the Public Employees' Retirement System on behalf of its employees who are members of the Public Employees' Retirement System. "Employee contributions" shall mean those contributions to the Public Employees' Retirement System which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.
- II. That the contributions made by the City of Morgan Hill to the Public Employees' Retirement System, although designated as employee contributions, are being paid by the City of Morgan Hill in lieu of contributions by the employees who are members of the Public Employees' Retirement System.
- III. That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the City of Morgan Hill to the Public Employees' Retirement System.

- IV. That the City of Morgan Hill shall pay to the Public Employees' Retirement System the contributions designated as employee contributions from the same source of funds as used in paying salary.
- V. That the amount of the contributions designated as employee contributions and paid by the City of Morgan Hill to the Public Employees' Retirement System on behalf of an employee shall be the entire contribution required by the employee by the Public Employees' Retirement Law (California Government Code sections 20000, et seq.).
- VI. That the contributions designated as employee contributions made by the City of Morgan Hill to the Public Employees' Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the Public Employees' Retirement System.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 1st Day of October, 2003, by the following vote.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

🏛️ CERTIFICATION 🏛️

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on October 1, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT
MEETING DATE: October 1, 2003

Agenda Item # 9

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1635, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 3.56.130 of CHAPTER 3.56 (Development Impact Mitigation Fees) of TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING EXEMPTION OF CONVERSIONS OF RESIDENCES TO COMMERCIAL USES AND/OF ADDITION OF LIMITED INCREASED SPACE IN STRUCTURES LOCATED IN CC-R DISTRICT FROM DEVELOPMENT IMPACT MITIGATION FEES.

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1635, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On September 17, 2003, the City Council Introduced Ordinance No. 1635, New Series, by the Following Roll Call Vote: AYES: Carr, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang, Kennedy.

FISCAL IMPACT:

If amended, there would be a “de minimus” impact on impact fees and utility in-lieu undergrounding fees.

ORDINANCE NO. 1635, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 3.56.130 of CHAPTER 3.56 (Development Impact Mitigation Fees) of TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING EXEMPTION OF CONVERSIONS OF RESIDENCES TO COMMERCIAL USES AND/OF ADDITION OF LIMITED INCREASED SPACE IN STRUCTURES LOCATED IN CC-R DISTRICT FROM DEVELOPMENT IMPACT MITIGATION FEES.

WHEREAS, the City of Morgan Hill adopted a Downtown Plan in 1980, which Plan created an unique image for downtown including recommendations for commercial and residential development along with public and private sector design guidelines to bring uniformity and visual harmony to the downtown; and,

WHEREAS, the City of Morgan Hill preliminarily adopted an Update of the Downtown Plan on May 7, 2003 (“Update”), which includes a vision for the future, focused land use strategies, urban design improvements, and implementation strategies to guide public and private efforts, and which encourages a diverse mix of uses in the Downtown area, while emphasizing specialty retail, restaurant and entertainment uses; and

WHEREAS, the Update also encourages residential-to-commercial conversion of properties in specific areas of the downtown to enhance the commercial revitalization of Downtown, as well as develop the Downtown as a destination for all Morgan Hill residents and visitors; and,

WHEREAS, the number of existing buildings available for commercial uses downtown is limited, and such buildings as are available for commercial uses may require expansion to accommodate the preferred specialty retail, restaurant and entertainment uses; and,

WHEREAS, Chapter 3.56 of the Morgan Hill Municipal Code provides for imposition of impact fees to fund needed improvements to public facilities and infrastructure to accommodate development; and,

WHEREAS, the conversion of existing single family residences located in the Downtown, which have a CC-R zoning designation, from residential use to primarily commercial use will have a “de minimus” impact on public facilities and infrastructure needed to accommodate the change of use over a three-year period, as the number of projected conversions is exceedingly low within that time period; and,

WHEREAS, the improvement of any existing commercial or industrial building or structure located on property with a CC-R zoning designation which does not increase the total floor area of such building by more than 1,500 square feet within any ten year period will also have a “de minimus” impact on public facilities and infrastructure to accommodate the improvements over a three-year period, as the number of projected improvements is exceedingly low within that time period; and,

WHEREAS, it is appropriate to exempt the above-described projects from the imposition of development impact fees due to their “de minimus” effect; and,

WHEREAS, the exemption of the above-described projects from the imposition of development impact fees necessitates minor revisions to the Municipal Code provisions regarding such fees; and,

WHEREAS, a public hearing on adoption of this ordinance was duly noticed, and held as part of a regular City Council meeting held on September 17, 2003, at 7:30 p.m. in the Council chambers located at City Hall, 17555 Peak Avenue; and,

WHEREAS, the City Council received and duly considered all written and verbal reports and comments provided to it by staff and the public, which comments are hereby incorporated into the record on this matter; and,

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 3.56.130(A)(3)-(4) of Chapter 3.56 (Development Impact Mitigation Fees) of Title 3 (Revenue) of the Municipal Code of the City of Morgan Hill is hereby added to provide:

3. The conversion of an existing single family residence from a residential use to primarily a commercial use located on property with a CC-R zoning designation (i.e., Central Commercial-Residential District) shall be exempted from application of the provisions of this chapter. This exemption shall expire three (3) years from the effective date of this ordinance.
4. Improvements of any existing commercial or industrial building or structure located on property with a CC-R zoning designation (i.e., Central Commercial-Residential District) which does not increase the total floor area of such building by more than 1,500 square feet within any ten year period shall be exempted from application of the provisions of this chapter. This exemption shall expire three (3) years from the effective date of this ordinance.”

SECTION 3. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 4. Exemption from CEQA. Pursuant to Title 14, California Code of Regulations, Sections 15061 and 15273(4), the City Council finds that this ordinance is exempt from the California Environmental Quality Act.

SECTION 5. Effective Date; Publication. This Ordinance shall take effect from and after sixty (60) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 17th day of September 2003, and was finally adopted at a regular meeting of said Council on the 1st day of October 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1635, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st day of October 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT
MEETING DATE: October 1, 2003

Agenda Item # 10

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1636, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 12.02.190 (Exceptions) OF CHAPTER 12.02 (Street and Sidewalk Development) OF TITLE 12 (Streets, Sidewalks and Public Places) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING EXEMPTION OF CONVERSIONS OF RESIDENCES TO COMMERCIAL USES AND/OF ADDITION OF LIMITED INCREASED SPACE IN STRUCTURES LOCATED IN CC-R DISTRICT.

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1636, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On September 17, 2003, the City Council Introduced Ordinance No. 1636, New Series, by the Following Roll Call Vote: AYES: Carr, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang, Kennedy.

FISCAL IMPACT:

If amended, there would be a “de minimus” impact on impact fees and utility in-lieu undergrounding fees.

ORDINANCE NO. 1636, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 12.02.190 (Exceptions) OF CHAPTER 12.02 (Street and Sidewalk Development) OF TITLE 12 (Streets, Sidewalks and Public Places) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING EXEMPTION OF CONVERSIONS OF RESIDENCES TO COMMERCIAL USES AND/OF ADDITION OF LIMITED INCREASED SPACE IN STRUCTURES LOCATED IN CC-R DISTRICT.

WHEREAS, the City of Morgan Hill adopted a Downtown Plan in 1980, which Plan created an unique image for downtown including recommendations for commercial and residential development along with public and private sector design guidelines to bring uniformity and visual harmony to the downtown; and,

WHEREAS, the City of Morgan Hill preliminarily adopted an Update of the Downtown Plan on May 7, 2003 (“Update”), which includes a vision for the future, focused land use strategies, urban design improvements, and implementation strategies to guide public and private efforts, and which encourages a diverse mix of uses in the Downtown area, while emphasizing specialty retail, restaurant and entertainment uses; and

WHEREAS, the Update also encourages residential-to-commercial conversion of properties in specific areas of the downtown to enhance the commercial revitalization of Downtown, as well as develop the Downtown as a destination for all Morgan Hill residents and visitors; and,

WHEREAS, the number of existing buildings available for commercial uses downtown is limited, and such buildings as are available for commercial uses may require expansion to accommodate the preferred specialty retail, restaurant and entertainment uses; and,

WHEREAS, Chapter 12.02 of the Morgan Hill Municipal Code provides for imposition of exactions to create needed improvements to public facilities and infrastructure to accommodate development; and,

WHEREAS, the conversion of existing single family residences located in the Downtown, which have a CC-R zoning designation, from residential use to primarily commercial use will have a “de minimus” impact on public facilities and infrastructure needed to accommodate the change of use over a three-year period, as the number of projected conversions is exceedingly low within that time period; and,

WHEREAS, the improvement of any existing commercial or industrial building or structure located on property with a CC-R zoning designation which does not increase the total floor area of such building by more than 1,500 square feet within any ten year period will also have a “de minimus” impact on public facilities and infrastructure to accommodate the improvements over a three-year period, as the number of projected improvements is exceedingly low within that time period; and,

WHEREAS, it is appropriate to exempt the above-described projects from the imposition of the exactions levied by Chapter 12.02 due to their “de minimus” effect; and,

WHEREAS, the exemption of the above-described projects from the imposition of exactions levied by Chapter 12.02 necessitates minor revisions to the Municipal Code provisions regarding such fees; and,

WHEREAS, a public hearing on adoption of this ordinance was duly noticed, and held as part of a regular City Council meeting held on September 17, 2003, at 7:30 p.m. in the Council chambers located at City Hall, 17555 Peak Avenue; and,

WHEREAS, the City Council received and duly considered all written and verbal reports and comments provided to it by staff and the public, which comments are hereby incorporated into the record on this matter;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 12.02.190(Exceptions) of Chapter 12.02 (Street and Sidewalk Development) of Title 12 (Streets, Sidewalks and Public Places) of the Municipal Code of the City of Morgan Hill is hereby amended to provide:

“ . . .

H. The conversion of an existing single family residence from a residential use to a primarily commercial use located on property within a CC-R zoning designation (i.e., Central Commercial-Residential District) shall be exempt from the provisions of this chapter. This exemption shall expire three (3) years from the effective date of this ordinance.

I. In cases where the improvements of any existing commercial or industrial building or structure located on property within a CC-R zoning designation increases the total floor area of such building to an extent of twenty-five percent (25%) or more but the increase in the total floor area is less than 1,500 square feet within any ten year period, the provisions of this chapter shall not apply. This exemption shall expire three (3) years from the effective date of this ordinance.”

SECTION 3. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 4. Exemption from CEQA. Pursuant to Title 14, California Code of Regulations, Sections 15061 and 15273(4), the City Council finds that this ordinance is exempt from the California Environmental Quality Act.

SECTION 5. Effective Date; Publication. This Ordinance shall take effect from and after sixty (60)

days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 17th day of September 2003, and was finally adopted at a regular meeting of said Council on the 1st day of October 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1636, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st day of October, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT
MEETING DATE: October 1, 2003

Development Agreement DA-03-07: Central-Central Park

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant is requesting approval of a project development agreement for a 39-lot subdivision to be constructed on two parcels totaling 11.5 acres on a site located on the north of E. Central Avenue and East of Butterfield Boulevard within the Central Park Subdivision. The proposed 39-lot subdivision is considered phase VII of the Central Park project.

The project competed in the 2002 Measure P competition for building allotments. On May 27, 2003 the Planning Commission awarded 17 building allotments for FY 2004-05 and 22 building allotments for FY 2005-2006. The development agreement is for all 39 building allotments.

Development agreements are required as a formal contract between the developer and the City. The Development Agreement formalizes the commitments made during the Measure P process and establishes the development schedule for the project. The project specific commitments are identified in Paragraph 14 of the Development Agreement, and the development schedule is contained in Exhibit B.

This application was reviewed by the Planning Commission at its September 9, 2003 meeting. The Commission voted 6-0 recommending approval of the Development Agreement, as prepared. The Planning Commission staff report is attached for Council's reference.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

Agenda Item # 11

Prepared By:

Associate Planner

Approved By:

**Director of Community
Development**

Submitted By:

City Manager

ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING DEVELOPMENT
AGREEMENT, DA-03-07: CENTRAL-CENTRAL PARK
(APN 726-27-104 & 105))**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAINS AS FOLLOWS:**

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 03-17a and 03-17b, adopted May 27, 2003, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-25: Central-Central Park	39 Single-Family Homes

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 1st Day of October 2003, and was finally adopted at a regular meeting of said Council on the 15th Day of October 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 15th Day of October, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk

RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103

Recorded at the request of
and when recorded mail to:

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2003, by and between **SOUTH VALLEY DEVELOPERS, INC.**, under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On _____, 2003, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on _____, 2003.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

- (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
- (d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

- Exhibit "A" - Development Allotment Evaluation
- Exhibit "B" - Development Review and Approval Schedule
- Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the

agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On May 27, 2003 the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-02-25: Central-Central Park, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of 39 Single-Family dwellings
as approved by the City of Morgan Hill Planning Commission, or as
amended by the Architectural Review Board.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development

Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this

Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single-Family Medium & Multi-Family Low and zoning classification of R1,7,000 RPD & R2-3,500 RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

(d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following **safety** features in the development:

- (i) Provide fire escape ladders for upper floor bedrooms.
- (ii) Provide one mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 square feet of floor space, plus one fire extinguisher for each additional 1,500 square foot of floor space.
- (iii) Provide outdoor lighting to meet all police department specifications.
- (iv) Install illuminated or self luminous address numbers for each unit and painted curb numbers where possible.
- (v) Use of noncombustible siding materials on all the units within the project. The noncombustible siding must be used on at least fifty percent on an individual unit.
- (vi) Installation of an intrusion and fire alarm system, monitored by a central station and which meets City ordinance.
- (vii) Provides automatic earthquake shut-off valves for gas service.

- (i) Property Owner agrees to include the following **open space and landscape** improvements in the development:

- (i) All park and open space area are to be maintained by a HOA.
- (ii) All interior paths provide access to onsite open space areas.
- (iii) Provide 80 ft. wide landscape buffer along the Butterfield Blvd. frontage.
- (iv) Twenty four inch box size trees will be provided at a ratio of one tree per ten on-site trees. The trees shall have a minimum height of nine feet and spread of three to four feet.
- (v) Varied front yard landscape plans will be installed prior to

- occupancy.
- (vi) Deciduous trees will be planted along the south facing side of home to conserve energy.
- (vii) Drought tolerant grasses will be used for lawn areas. Lawns areas will not exceed 25 percent of the landscape area.
- (viii) Two trees per corner lot. All street trees shall be 24" box from City List.
- (ix) Automatic irrigation systems will be installed which utilize separate valves and circuits for trees, shrubs and ground covers and lawn areas. Minimum of four separate valves will be provided.
- (x) Non-irrigated hardscape will be provided on at least 15 percent of the landscape area (does not include pedestrian walkways across circulation aisles).
- (xi) At least fifty percent of all plant material used shall be water conserving plants contained on the Selected Plant List, Appendix A of the City Water Conservation Landscape Guide.
- (xii) Landscaping shall be installed on all areas visible from public and private rights-of-way.

(j) Property Owner agrees to fulfill the following **school** commitments:

- (i) **Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.**
- (ii) **Install offsite pedestrian safety improvements at El Toro Elementary School including crosswalks, safety flashers, or other items as needed by the District up to \$3,000 per unit, or in lieu fee shall be paid to the City (\$3,000 per unit) and held until such time as the alternative improvement(s) is identified and installed.**

(k) Property Owner agrees to purchase 1.68 transferable development credits (TDC's) subject to this development potential transfer mechanism. Should purchase of the TDC's prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee in an amount satisfactory to the City Council. Proof of unsuccessful negotiation for the TDC's must be presented to the City with the request of the in-lieu fee option. Building permits for phase VII will not be granted unless this provision has been complied with to the satisfaction of the City Council. The .08 fraction of the open space fee shall also be paid prior to the issuance of building permits for phase VII.

(l) Property Owner agrees to include the following **affordable housing** features in the development:

(i) The Property Owner shall provide at least four of the units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMRs shall be a minimum of 1250 sq. ft., 3 bedrooms with 2 baths The BMR unit(s) shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. One of the BMR units shall be under construction and the framing inspection passed prior to the issuance of the 8th building permit and the remaining three BMR units shall be under construction and framing inspection passed prior to the issuance of the

30th building permit.

(ii) The Property Owner agrees to pay 0 percent of the per unit cost of the standard housing mitigation fee payable to the City of Morgan Hill prior to the issuance of the (indicate number) building permit.

(ii) Below Market Rate (BMR)

(iii) Purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents) agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.

(iv) Property Owner will provide the buyer(s) of the BMR unit(s) the same option to upgrade the materials in the BMR home as a market rate buyers would in the market rate homes.

1. Property Owner will provide the same level of customer service to the BMR buyer as the market rate buyer.
2. The Below Market Rate (BMR) Program Guidelines are hereby incorporated herein in full by this reference.
3. Exterior trim entry door hardware, and finish to the same standard as the Market Rate.
4. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed shall be of good quality. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home.

Minimum Interior standard finishes will be as follows:

- All closets shall have doors
- Interior doors to be raised panel type or same as market rate
- Door hardware to be brass finish or the equivalent
- Appliances shall be major brand name
- Microwave hood shall be installed over stove
- Kitchen counters shall be white ceramic tile
- Kitchen cabinets shall be stained wood with white melamine interiors
- Units will be roughed in for AC including electrical and line set.
- Basic alarm system to secure all openings to the home
- Carpet in bedrooms, hallways, family rooms
- Linoleum or tile in entry, bathrooms kitchens
- Laminate flooring may be substituted for carpet or linoleum
- Electric garage door opener

development: (m) Property Owner agrees to include the following **construction** features in the

- (i) Drywall will be source separated and recycled.
- (ii) Cardboard containers and boxes will be source separated and recycled.
- (iii) Buildings consume 15% less energy than allowed by California's Title 24, per Title 24 in affect at the time of award of allotments. This will be accomplished by using the high efficiency furnaces, insulating hot water pipes, providing thermostatically controlled attic fans, exterior wall and attic insulation and points of demand hot water circulating system and high efficiency appliances.
- (iv) Project shall provide two separately zoned high-efficiency heating systems in units over 3,000 sq. ft. and units less than 3,000 sq. ft. whose floor plan allow effective dual-zoning.
- (v) Project shall include the use of re-circulating hot water systems with demand pumping.
- (vi) Project will use EPA "Energy Star" labelled windows with low-e coating and vinyl or metal frames, and include installation of a high efficiency ratings or greater in all dwelling units.
- (vii) The project will include the installation of cast-iron drainage pipe and piping insulation between floors.
- (viii) Installation of future ready wiring concepts such as home running phone lines form all habitable rooms directly to main phone box rather than lopping RJ6 for television/video and high speed computer access, and CAT5R or equivalent for telephone lines.
- (ix) Exterior shear wrap on the entire structure.
- (x) Glue and screw sub floors.
- (xi) Pre-plumb gas lines to dryer, as 220-volt outlet.
- (xii) Windows shall be installed using a two-part process. First, there will be installation of the standard 30 pound felt and then install a thick layer of bituthane over the top of the windows. Lathing will then be pushed up under the bottom layer of the bituthane, creating a watertight window.
- (xiii) All bathroom walls, laundry walls, and master bedroom walls shall be insulated.
- (xiv) All sheet rock shall be fastened to the studs with Type (W) screws.
- (xv) Shall use cast iron or sound attenuating plumbing drops at second floor plumbing.
- (xvi) Porches and balconies shall be on at least 25% of the units.
- (xvii) Project shall use two different roof lines and different roof pitches.

improvements: (n) The Property Owner agrees to provide the following **circulation**

- (i) The property owner will provide walkways and bike paths through the park and open space areas.
- (ii) Curilinear streets along with traffic control devices (ie stop signs) to discourage fast through traffic.
- (iii) Streets stubs are proposed on both the easterly and westerly boundaries of the project. The street stubs shall be consistent with the circulation element of the General Plan.
- (iv) Interior street shall meet all street standards.
- (v) A minimum 20 foot clear view back-out distance between enclosed garage space and drive aisle.

- (vi) Two access points from Central Avenue greater than 200 feet apart shall be provided.
- (vii) Access points to the project shall provide adequate circulation for emergency response and police patrol.

(o) The Property Owner agrees to provide **Storm Drain** improvements in accordance with the requirements and specifications of the Public Works Department.

(p) The Property Owner agrees to provide the following park and recreation improvements:

- (i) Applicant shall supply a full basketball court, passive recreation area, practice soccer field, two tot lots, tennis court, swimming pool, family BBQ/picnic area, spa/Jacuzzi and restroom area.

(q) Water mains either new or existing shall be gridded on and local streets.

- (i) Project will grid from E. Main Avenue to Calle Mazatan to Central Avenue.

(r) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(s) The project shall provide the following information, by address for each unit, to the Community Development Department:

- (i) Date of sale
- (ii) The number of bedrooms
- (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in

Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate

this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day

period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill: Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

With a copy to: City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Property Owner: Central Park Development, LLC
16060 Caputo Drive, Suite 160
Morgan Hill, CA 95037

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from

performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefor, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

HELENE LEICHTER, City Attorney

J. EDWARD TEWES, City Manager

Attest:

IRMA TORREZ, City Clerk

PROPERTY OWNER(S)

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

- 15 -
EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MP-02-25: E. Central-Central Park

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

EXHIBIT "B"

**DEVELOPMENT SCHEDULE MP-02 -25: Central-Central Park
FY 2004-2005 (17 Allotments)
FY 2005-2006 (22 Allotments)**

I. SUBDIVISION APPLICATION	
Applications Filed:	08/01/03
II. SITE REVIEW APPLICATION	
Application Filed:	Approved
III. FINAL MAP SUBMITTAL	
Map, Improvements Agreement and Bonds:	02/28/04
IV. BUILDING PERMIT SUBMITTAL	
Submit plans to Building Division for plan check:	06/30/04
V. BUILDING PERMITS	
Obtain Building Permits (FY2004-2005):	03/31/05
Commence Construction (FY2004-2005):	06/30/05
Obtain Building Permits (FY2005-2006):	03/31/06
Commence Construction (FY2005-2006):	06/30/06

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 20 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

- 17 -
EXHIBIT "C"

LEGAL DESCRIPTION
MP-02 -25: Central-Central Park

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

PARCEL ONE:

Parcel B, as shown on that certain Map entitled, “ Tract No. 9426, Central Park Phase 5”, which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on August 14, 2002 in Book 751 of Maps, at Pages 3, 4 and 5.

PARCEL TWO:

Parcel A, as shown on that certain Map entitled, “Tract No. 9475, Central Park, Phase 6”, which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on June 4, 2003, in Book 760 of Maps at Page(s) 53, 54 and 55.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 1, 2003

DA 03-08: SUNNYSIDE-QUAIL CREEK DEVELOPMENT

RECOMMENDED ACTION(S):

Open/close Public Hearing
Waive the First and Second Reading of Ordinance
Introduce Ordinance

EXECUTIVE SUMMARY:

The applicant is requesting approval of a project development agreement for 22 single family homes within the Quail Creek project currently under construction on the north east corner of the intersection of Sunnyside Ave. and Watsonville Rd. The proposed development agreement would cover phase III of the Quail Creek project.

In March 2002, the City Council approved an RPD plan for the 15.7 acre Quail Creek project. The Quail Creek project first received building allocations in the 2000 MP competition. The developer has pulled building permits and is currently under construction on the first 20 units known as Phase 1 of the project. Phase 1 improvements include the frontage along Watsonville Rd. and a portion of Sunnyside Ave.

In May 2002, the Planning Commission awarded another 12 allocations for FY 2003-04. The final map for Phase 2 (12 units) has been recorded but construction has not yet begun. The Phase 2 improvements include additional frontage improvements along Sunnyside Ave.

In May 2003, the Commission awarded 14 allocations for FY 2004-05 and 8 allocations for FY 2005-06. The Quail Creek project is now completely allocated.

Project development agreements are required as a formal contract between the developer and the City. The development agreement formalizes the commitments made during the MP process and the development schedule for the project. The development agreement for 22 allotments awarded in the 2002 competition has been completed and is attached as Exhibit A. The 2002 MP commitments and processing schedule have been included within the agreement.

This application was reviewed by the Planning Commission at their September 9 meeting, at which time the Commission voted 6-0 to recommend approval of the proposed development agreement as prepared. The Planning Commission staff report and minutes are attached for Council's reference.

FISCAL IMPACT: No budget adjustment required

Agenda Item # 12

Prepared By:

Senior Planner

Approved By:

**Director of Community
Development**

Submitted By:

City Manager

ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING DEVELOPMENT
AGREEMENT, DA 03-08 FOR APPLICATION MP 02-24:
SUNNYSIDE-QUAIL CREEK. (APN 767-29-006)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 03-17a & b, adopted May 27, 2003, has awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 02-24: Sunnyside-Quail Creek	22 Single-Family Homes

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance (and attached hereto) are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 1st Day of October 2003, and was finally adopted at a regular meeting of said Council on the 15th Day of October 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 15th Day of October, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk

Exhibit A

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 6103

Recorded at the request of
and when recorded mail to:

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2003, by and between QC Development, L.P., under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

- A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;
- B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;
- C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;
- D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);
- E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;
- F. On _____, 2003, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on _____, 2003.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

- (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
- (d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

- Exhibit "A" - Development Allotment Evaluation
- Exhibit "B" - Development Review and Approval Schedule
- Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On May 27, 2003 the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-02-24: Sunnyside-Quail Creek, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of 22 single family homes
as approved by the City of Morgan Hill Planning Commission, or as
amended by the Architectural Review Board.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for the zero lot line or reduced setback detached units, evidence shall be specifically provided to the City that the developer is unable to obtain construction liability insurance due to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development

Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the

approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single Family medium and zoning classification of R-1 7,000, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the

City of Morgan Hill under Site and Architectural Review Process.

(d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following **safety** features in the development:

- (i) Provide fire escape ladders for upper floor bedrooms.
- (ii) Provide one mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 square feet of floor space, plus one fire extinguisher for each additional 1,500 square foot of floor space.
- (iii) Provide outdoor lighting to meet all police department specifications.
- (iv) Install illuminated or self luminous address numbers for each unit and painted curb numbers where possible.
- (v) Use of noncombustible siding materials on at least fifty percent of the units within the project. The noncombustible siding must be used on at least fifty percent on an individual unit.
- (vi) Installation of an intrusion and fire alarm system, monitored by a central station and which meets City ordinance.
- (vii) Provides automatic earthquake shut-off valves for gas service.

(i) Property Owner agrees to include the following **landscape** improvements in the development:

- (i) Applicant agrees to provide twenty-four inch box-size trees from a city approved list, with a minimum height of nine feet and a spread of three to four feet. The box-size trees will be provided within the development at a ratio of one box-size tree per ten trees provided with the landscape area to be installed by the developer. The one box-size tree per ten trees calculation does not include street trees.
- (ii) Provides sufficient planting around all necessary and appropriate group parking to achieve shading and visual screening as viewed from the public street.
- (iii) Varied front yard landscaping plans are installed by the developer.

- (iv) Deciduous trees will be planted along the south facing side of homes.
- (v) All street trees are twenty-four-inch box trees from the city approved list with a minimum of 2 trees per lot, 3 trees per corner lot.
- (vi) Drought tolerant grasses are used for lawn areas and no more than twenty-five percent of the landscape area is covered with lawn.
- (vii) Automatic irrigation systems utilize separate valves and circuits for trees; shrubs and groundcovers; and lawn areas. Minimum of three separate valves required.
- (iix) Landscaping is installed on all areas visible from public and private rights-of-way
- (ix) The landscape to be installed by the developer will include hardscape coverage such as decorative paving, wood decking, decorative stone and similar non-irrigated areas on at least fifteen percent of the landscape area.
- (x) For at least 50% of all plant material, uses water conserving plants contained on the Selected Plant List, Appendix A of the City Water Conservation Landscape Guide.

(j) Property Owner agrees to include the following **open space** improvements in the development:

- (i) Provides a significant landscaped open space buffer area along Santa Teresa Blvd./Sunnyside Avenue and Watsonville Road.
- (ii) Private common open space is provided and maintained by a homeowner's association.
- (iii) Pedestrian/bicycle pathway will be 7+ feet wide and made of concrete per city standards. The average depth is 55' of open space per project approved standard conditions. The pathway will not be redundant of city required sidewalks.
- (iv) The property owner will provide a passive recreation area/open space area with walking path and benches, a tot lot with 3 activities and a 2 hoop basketball court.
- (v) The property owner will install bike lanes along the project frontage on Sunnyside and Watsonville Road for a total distance of 2,076 linear feet of bike lane.
- (vi) The open space area along Sunnyside Ave. shall include walkways which will connect to the existing sidewalk to the north along Sunnyside and Via de Castille.
- (vii) Will pay double the required in-lieu park fees up to \$3,000 per unit.

(k) Property Owner agrees to fulfill the following **school** commitments:

- (i) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.

- (ii) Install offsite pedestrian safety improvements at Paradise Valley Elementary School or Machado School including crosswalks, safety flashers, or other items as needed by the District up to \$3,000 per unit, or in lieu fee shall be paid to the City (\$3,000 per unit) and held until such time as the alternative improvement(s) is identified and installed.

(l) Property Owner agrees to purchase 1.8 transferable development credits (TDC's) subject to this development potential transfer mechanism. Should purchase of the TDC's prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee in an amount satisfactory to the City Council. Proof of unsuccessful negotiation for the TDC's must be presented to the City with the request of the in-lieu fee option. Building permits for the FY 2005-06 allocations will not be granted unless this provision has been complied with to the satisfaction of the City Council. The .08 fraction of the open space fee shall also be paid prior to the issuance of building permits for FY 2005-06 allocations.

(m) Property Owner agrees to include the following **housing types** in the development:

- (i) Two low income for sale, Below Market Rate units of approximately 1,223 sq. ft., with three bedrooms and 1.5 bathrooms.
- (ii) Four moderate rate units (Non-BMR's). The final sales price (at close of escrow) for the six moderate rate units will be based on HUD income limits for a family of 4 at the closing date.
- (iii) Three of the units will be single story.

(n) Property Owner agrees to include the following **affordable housing** features in the development:

- (i) The Property Owner shall provide at least two (2) of the units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR units shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. Two of the BMR units shall be under construction and the framing inspection passed prior to the issuance of the 11th building permit and framing inspection passed on the third unit prior to the issuance of the 22nd building permit.
- (ii) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents) agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.
- (iii) Property Owner will provide the buyer(s) of the BMR unit(s) the same option to upgrade the materials in the BMR home as a market rate buyers would in the market rate homes.

1. Property Owner will provide the same level of customer service to the BMR buyer as the market rate buyer.
2. The Below Market Rate (BMR) Program Guidelines are hereby incorporated herein in full by this reference.
3. Exterior trim entry door hardware, and finish to the same standard as the Market Rate.
4. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed shall be of good quality. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home.

Minimum Interior standard finishes will be as follows:

- All closets shall have doors
- Interior doors to be raised panel type or same as market rate
- Door hardware to be brass finish or the equivalent
- Appliances shall be major brand name
- Microwave hood shall be installed over stove
- Kitchen counters shall be white ceramic tile
- Kitchen cabinets shall be stained wood with white melamine interiors
- Units will be roughed in for AC including electrical and line set.
- Basic alarm system to secure all openings to the home
- Carpet in bedrooms, hallways, family rooms
- Linoleum or tile in entry, bathrooms kitchens
- Laminate flooring may be substituted for carpet or linoleum
- Electric garage door opener

- development:
- (m) Property Owner agrees to include the following **construction** features in the
 - (i) Dry wall will be source separated and recycled;
 - (ii) Cardboard containers and boxes are source separated and recycled.
 - (iii) Buildings consume 15% less energy than allowed by California's Title 24 requirements which were in effect at the time of allotment. This will be accomplished by using the high efficiency furnaces, insulating hot water pipes, providing thermostatically controlled attic fans, exterior wall and attic insulation and points of demand hot water circulating system and high efficiency appliances.
 - (iv) Heating systems with two separate zones will be used in minimum of 60% of the dwelling units.

- (v) Install a Laing SM-303 recirculating hot water system with demand pumping
- (vi) Install Class A roof material.
- (vii) Future ready wiring such as home running phone lines from all habitable rooms directly to main phone box rather than looping using RJ6 for television/video and CAT5R or equivalent for telephone lines.
- (viii) Gas will be supplied to all dryer spaces plus 220 volt outlet.
- (ix) Attic spaces have thermostatic controlled exhaust fans.
- (x) Vertical drain lines between floors will be cast iron to reduce noise.
- (xi) Uses porches, balconies, or multi-unit courtyards on at least 25% of units
- (xii) At least two different roof lines and two different pitches will be used throughout the project.
- (xiii) Project will use a variety of trim and base colors throughout the project.
- (xiv) Project will provide consistent detail on all sides.
- (xv) All attic locations shall be designed to give the homeowner no less than 48" overhead.
- (xvi) All bathroom, laundry room, and master bedroom walls shall be insulated.
- (xvii) All sheet rock shall be fastened to the studs with Type (W) screws.
- (xviii) Cast iron or sound insulating plumbing drops will be used at second floor plumbing.
- (xix) Exterior shear wrap shall be used.
- (xx) Windows shall be installed with a two-part process. First, install the standard 30lb felt and then install a thick layer of bituthane over the top of the windows so they will be leak proof. Lathing will then be pushed up under the bottom layer of the bituthane creating a water tight window.

- improvements:
- (n) The Property Owner agrees to provide the following **circulation**
 - (i) Walkways between Sunnyside Avenue and the end of each cul-de-sac will be installed.
 - (ii) Construct improvements to the existing bus stop along Watsonville Road across from the project frontage, including a bench and sidewalk improvements per VTA standards
 - (iii) Install full street improvement to Via de Castille with curb, gutter, sidewalk, landscaping, soundwall, and under grounding of overhead utility lines.
 - (o) The Property Owner agrees to provide the following **public facility**
 - (i) Will grid the water main from La Rocca Drive to Sunnyside Avenue and also through to Watsonville Road.

- (ii) Storm drain lines that are to be maintained by the City will be constructed entirely within the paved area of the street.
- (iii) Storm drainage from the project will be accommodated through improvements to the City's master storm drain plan for the area and through onsite detention facilities which will provide area-wide relief. This will include improvements along the open space buffer area on Sunnyside and tie into the 60" RCP to Llagas Creek. This project will provide 0.35 acre feet of additional storage capacity and detention for the peak, Q100 year flow.
- (iv) Contribute \$1,000 per unit to the offsite storm drain fund.
- (v) Install half street (55') improvements along Sunnyside Avenue and Watsonville Road.
- (vi) Install full median improvements on Watsonville Road at a cost of \$1,106 per home.
- (vii) Upsizing the existing 30 RCP on Sunnyside to 54" RCP.
- (viii) Undergrounding of existing overhead utilities and relocating of existing utilities.
- (ix) Fully improve the northeast intersection of Sunnyside/Watsonville Road. This will include paving and restriping per the city and county standards and electrical stub for future signalization.
- (x) Contribute \$1,000 per unit to the Capital Improvements Program Fund.

(p) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(q) The project shall provide the following information, by address for each unit, to the Community Development Department:

- (i) Date of sale
- (ii) The number of bedrooms
- (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

- (a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;
- (b) Property Owner gives the City written notice of its decision to terminate this Agreement;
- (c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or
- (d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

- (a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;
- (b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

- (a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.
- (b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.
- (c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill: Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

With a copy to: City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Property Owner: Scott Schilling
QC Development, L.P.
16060 Caputo Drive, Suite 160
Morgan Hill, CA 95037

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefore, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

HELENE LEICHTER, City Attorney

J. EDWARD TEWES, City Manager

Attest:

IRMA TORREZ, City Clerk

PROPERTY OWNER(S)

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MP-02-24: Sunnyside-Quail Creek

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

EXHIBIT "B"

DEVELOPMENT SCHEDULE FOR MP-02-24: Sunnyside-Quail Creek

FY 2004-05 (14 allocations)/FY 2005-06 (8 allocations)

I.	SUBDIVISION AND ZONING APPLICATIONS	
	Applications Filed:	8-01-03
II.	SITE REVIEW APPLICATION	
	Application Filed:	9-02-02
III.	FINAL MAP SUBMITTAL	
	Map, Improvements Agreement and Bonds:	2-28-04
IV.	BUILDING PERMIT SUBMITTAL	
	Submit plans to Building Division for plan check:	6-30-04
V.	BUILDING PERMITS	
	Obtain Building Permits: (14 units)	3-13-05
	Commence Construction:	6-30-05
	Obtain Building Permits: (8 units)	3-13-06
	Commence Construction:	6-30-06

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 11 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"

**LEGAL DESCRIPTION
MP-02-24: Sunnyside-Quail Creek**

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

ALL OF LOT 1, as shown upon that certain Map entitled, "BARRETT AND MARK SUBDIVISION OF THE GRANT OAK RANCH," which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on July 12, 1906 in Book L of Maps, at pages(s) 42.

Assessor's Parcel No: 767-29-006



CITY COUNCIL STAFF REPORT
MEETING DATE: OCTOBER 1, 2003

**CONDUCT HEARING AND CONSIDER ADOPTION
OF RESOLUTION OF NECESSITY FOR PROPERTY
ACQUISITION FOR PROPOSED TENNANT AVENUE
WIDENING**

RECOMMENDED ACTIONS:

- 1) Adopt attached Resolution of Necessity for portions of property identified as APN 817-04-002, 817-04-006 and 817-04-008 for the proposed Tennant Avenue Widening Project.
- 2) Approve the expenditures of \$68,025.00, \$82,750.00, and \$111,950.00 for properties 817-04-002, 817-04-006 and 817-04-008 respectively, plus escrow and closing costs for the acquisition of these properties. Total expenditures, excluding escrow and closing costs is \$262,725.

EXECUTIVE SUMMARY: The City's July 2001 General Plan references Tennant Avenue as a four-lane arterial. The west bound lane of Tennant Avenue, between Vineyard and Monterey requires widening in order to achieve this and thus is a safety and capacity issue if left in its current state. Staff has been working on acquiring right-of-way for the Tennant Avenue Widening project since September 2002. Staff filed a Notice of Negative Determination in July 2002, which is in accordance with the City of Morgan Hill's procedures for compliance with the California Environmental Quality Act (CEQA). Real property appraisals were prepared by Hulberg & Associates, Inc. for these three parcels, which are incorporated into this staff report by reference. Offer Letters were then sent to each of the property owners in September 2002 and revised Offer Letters in May 2003, including follow up communications by the City's right-of-way consultants and outside council.

The owners of interest in the properties have been notified of this hearing and their right to appear and be heard regarding items 1, 2, 3, and 5 in the findings of the attached resolution.

The City will be depositing with the State Condemnation Deposit Fund in Sacramento the amount of \$262,725 which represents the total appraised value of all parcels. The attached Resolution of Necessity must be adopted by a two-third Council majority.

It remains our goal to begin the construction of this project by April, 2004. The plans and specification for this project are almost complete and the project is scheduled to go out to bid in February 2004. Depending on the weather, the construction of the project will take approximately three months to complete. Based on this schedule, Staff anticipates completion by June 2004.

By adoption of the attached resolution, you are directing the City Attorney to institute and conduct, in regard to the stated properties, the conclusion actions of eminent domain for the acquisitions of the estates and interests necessary to widen Tennant Avenue.

FISCAL IMPACT: This project is fully funded in the CIP FY 2001/02 budget with a total appropriation of \$1,110,000. The funding sources are \$800,000 from RDA (317) and \$310,000 from Traffic Impact Fees (309). The project number is 507B99.

Agenda Item # 13

Prepared By:

Associate Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL DETERMINING THAT THE PUBLIC INTEREST
AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN
REAL PROPERTY AND DIRECTING THE FILING OF EMINENT
DOMAIN PROCEEDINGS**

(Tennant Avenue Widening Project)

WHEREAS, it is desirable and necessary for the City of Morgan Hill (hereinafter the “City”) to acquire certain real property, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, for the Tennant Avenue Widening Project (hereinafter referred to as the “Project”); and

WHEREAS, the City is vested with the power of eminent domain to acquire real property by virtue of Article I, Section 19 of the Constitution of the State of California, Section 37350.5 of the California Government Code, Section 4090 of the Street and Highways Code, and Section 1240.010 of the California Code of Civil Procedure; and

WHEREAS, pursuant to the provisions of Section 1245.235 of the California Code of civil Procedure, notice has been duly given to Marko and Klara Gera, Rose Hernandez, Rita Dakiwag, Caroline Gosé, Maurice Borquez, Robert Sr. and Angelita Carrasco, and Robert Jr. and Teresita Carrasco, whose properties are to be acquired by eminent domain and whose names and addresses appear on the Santa Clara County Equalized Assessment Roll, and the property owners have been given a reasonable opportunity to appear and be heard before the City Council; and

WHEREAS, pursuant to the provisions of Section 7267.2 of the California Government Code, the City has made an offer to the owners of record to acquire the subject property for the amount which it has established to be just compensation therefore.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES
HEREBY FIND AND DETERMINE AS FOLLOWS;**

SECTION 1: The public interest and necessity require the Project.

SECTION 2: The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

SECTION 3: The taking of the real property more particularly described in Exhibit A is necessary for the Project.

SECTION 4: All environmental review required by law has been prepared and adopted.

SECTION 5: The offer required by Section 7267.2 of the California Government Code has been made to the owners of record of the real property.

SECTION 6: The City's attorney or her duly authorized designee is hereby authorized and directed to institute and conduct to conclusion an action in eminent domain for the acquisition of the estates and interests aforesaid and to take such actions as he or she may deem advisable or necessary in connection therewith.

SECTION 7: The City may deposit with the State Treasury the probable amount of compensation and obtain an order for prejudgment possession of the subject property.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 1st Day of October, 2003, by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on October 1, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: October 1, 2003

UPDATE OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P)

RECOMMENDED ACTION(S):

1. Review Proposed Amendments
2. Accept Public Testimony
3. Provide Comments to Staff by Minute Action
4. Continue Review to October 15, 2003

EXECUTIVE SUMMARY:

In July of last year, the City Council appointed a committee to evaluate Measure P and to recommend changes to it which could be submitted to the voters for their consideration. Council Members Tate and Carr serve as Chair and Vice Chair, respectively, of the Committee. By March of this year, the Committee had identified 24 changes it felt were appropriate to the initiative. The 24 changes were reviewed by the Planning Commission and City Council in March and April. The Council provided direction to the Committee regarding the changes it had proposed. The Committee subsequently conducted a phone survey of Morgan Hill voters and community workshop to gauge community support for the changes it had developed. Through that process, three additional changes were identified.

The 27 changes have been put into initiative form. The initiative language was reviewed by the Committee on several occasions to ensure its accuracy and completeness. The draft initiative was reviewed by the Planning Commission on September 9th and 23rd. With several minor modifications, the Commission recommends the City Council place the initiative before the voters for their consideration.

Attached to this memo are a copy of the draft initiative and a more completed discussion of the initiative and prior comments made by the Planning Commission and City Council. The attorney who assisted the Committee and staff by drafting the initiative will attend the October 15th Council meeting to assist in addressing any questions which may arise.

FISCAL IMPACT: \$65,000 has been budgeted for this project. No budget adjustment is required.

Agenda Item # 14

Prepared By:

**Community
Development Director**

Submitted By:

City Manager



Memorandum

Date: October 1, 2003
To: City Manager
From: Community Development Department
Subject: Measure P Update, Proposed Initiative

RECOMMENDED ACTION

It is recommended that the City Council review the following information, receive public testimony, direct Staff to make any necessary amendments and continue the matter to the October 15th meeting. At that time, the final draft, incorporating any changes requested by the Council, will be available for Council action.

BACKGROUND

Council Review of Draft Amendments

In July of last year, the City Council appointed a committee to evaluate Measure P and to recommend changes to it which could be submitted to the voters for their consideration. Council member Tate chaired that committee and Council member Carr served as vice chair. The Committee met approximately twenty times to familiarize themselves with the initiative, to identify appropriate amendments and to review draft initiative language.

In March of this year, the Planning Commission reviewed proposed amendment to 24 sections and subsections of the initiative which were developed by the Committee. The Commission requested that changes to eight of those sections and suggested legal review of two other sections. The City Council reviewed the proposed amendments, including the Commission's recommendations, in April. The Council provided comments on four of the 24 sections. All of the sections receiving comments from the Council had elicited comments from the Commission, as well. A copy of the memo to the Committee identifying the 24 recommended changes, along with the Commission's and Council's comments is included as Attachment 1.

Two of the four sections commented upon by the Council address the Downtown set-aside category (section five) and the definition of the Core Area (section 24). Both of these sections were recommended for change by the Commission. The Council supported those sections as

drafted by the Committee. The two other sections commented upon by the Council address vertical mixed use projects (section seven) and desirable infill (section eleven). Both of these sections were recommended for change by the Commission to allow for more flexibility in their application. Two of the Council members agreed with the Commission's position and two other Council members felt the subjects were extensively discussed by the Measure P Update Committee and that the Committee's recommendation should be supported.

The draft initiative, attached as Attachment 2, does not include any amendment to sections seven or eleven.

Voter Survey

In order to gauge voter support for the most significant of the amendments proposed by the Committee, Staff contracted with the San Jose State University Foundation to conduct a phone survey. Several questions, unrelated to the amendments, were added to generally gauge the level of satisfaction with City services and support for an additional assessment for maintenance and expansion of City services. In addition, a number of demographic questions were asked to assist in determining if the survey reached a representative sample of Morgan Hill residents. A total of 608 persons were surveyed between March 20th and 22nd. The margin of error in the survey is approximately 4 percent.

Overall, the survey suggests that Morgan Hill voters are supportive of the extension of Measure P and many of the proposals of the Update Committee. Two areas in which the survey respondents were not as supportive dealt with concentrating development in the downtown area (Question 7) and elimination of the east-west split (Question 10).

Community Workshop

In addition to the survey, the Committee conducted a community workshop to receive comments regarding the proposed amendments. Although well-advertised, only seven members of the community attended the workshop. Most of the community members who attended the workshop were interested in learning about the proposed changes and had few comments about the proposed changes. The one significant comment addressed a provision in Measure P which limits the development potential of a particular property which was added to the Urban Service Area between March 1, 1990 and December 6, 1990 (Section 18.78.070D of the Municipal Code). A petition signed by many residents of the Fountain Oaks area called for the continuation of this provision into the new initiative.

PROPOSED INITIATIVE

Staff contracted with Shute, Mihaly and Weinberger, the law firm which reviewed the citizen-drafted Measure P, to prepare specific initiative language to update that Measure. The initiative is subdivided into three sections, similar to the Measure P initiative. Section 1 includes the findings and purpose of the initiative. Section 2 includes the amendments proposed to the General Plan. Section 3 includes the amendments proposed to the Residential Development

Control System (RDCS) ordinance. Consistent with the Measure P initiative, the amendments in Section 3 are specific and closely follow the amendments drafted by the Committee. The amendments in Section 2 closely parallel those of Section 3 but are more limited and general in their scope, as they will be incorporated into the General Plan. Language which is proposed to be added to the initiative is underlined and language proposed for deletion is lined out. Also, as mentioned previously, the Committee proposed 24 sections of the initiative be changed. For Council's reference, numbers corresponding to the numbered changes proposed by the Committee and previously reviewed by the Council (shown in Attachment 1) are included in the left margin of the proposed initiative (Attachment 2).

There are three significant changes which are proposed to be included in the update initiative which were not previously reviewed by the Council. The first change addresses school impacts. Senate Bill 50 significantly limits the City's options regarding mitigation for school impacts. The initiative has been amended to address this limitation and bring the initiative into compliance with state law. The second change clarifies the intent of the single unit exemption to the requirement to obtain an allocation for residential development. The third change addresses a provision of Measure P which limits development of properties which were added to the City's urban service area between March 1, 1990 and December 6, 1990. At the urging of community members who attended Committee meetings, this limiting provision is proposed to be extended to the year 2020, consistent with the rest of the initiative.

As mentioned previously, the Planning Commission recommended changes to 8 of the 24 proposed amendments. The City Council disagreed with the Commission on two of its recommended changes (sections five and 24) and supported the Committee's recommendations. Changes were made to four of the six other changes recommended by the Commission. The only two sections which the Commission requested be changed and about which the Council was undecided are sections seven and eleven. As previously mentioned, these sections deal with vertical mixed use projects and desirable infill.

The final version of the initiative was reviewed by the Planning Commission at its meetings of September 9th and 23rd. The Commission requested minor changes to the initiative which were intended to clarify the meaning of the provisions. No substantive changes were requested by the Commission. The Commission's requested changes are identified in the initiative by the use of italicized type.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 1, 2003

POLICY DIRECTION REGARDING OWNERSHIP ATTACHED HOUSING

RECOMMENDED ACTION: Staff recommends a project-by-project review of requests for zero lot line and reduced setback detached units.

EXECUTIVE SUMMARY: As discussed at the Sept. 17 Council meeting, there have been a number of changes in the insurance industry which have impacted the construction of new ownership attached housing. Most insurance carriers will no longer provide construction liability coverage for any project containing attached housing or they have significantly raised their premiums.

A subcommittee was formed to evaluate the matter and to formulate a proposed course of action. The subcommittee discussed possible solutions to the attached housing issue, including a 'no action' alternative, but concluded that the most feasible solution was to allow developers to replace attached dwellings with zero lot line or reduced setback detached units. A zero lot line or reduced setback detached unit is a dwelling physically separated from an adjacent dwelling on a separate lot of record by a distance of three to six feet, but architecturally connected by a design element to give the appearance of attachment. By allowing this modification, projects would be considered 100 percent detached, and developers would be able to secure construction liability insurance.

Two approaches were reviewed to allow for the zero lot line and reduced setback detached units: 1) a comprehensive approach, in which a comprehensive emergency ordinance would be drafted for the Council's consideration granting blanket approval of the zero lot line and reduced setback detached units, and 2) a project-by-project approach, whereas requests for zero lot line and reduced setback detached units would be reviewed on a project-by-project basis. The pros and cons for each approach are provided in Attachment A of this report. Staff recommends the project-by-project approach for the reasons outlined in Attachment A. Staff believes the benefits of the project-by-project approach outweigh the disadvantage of a longer approval process.

The City Attorney reviewed a copy of a draft comprehensive emergency ordinance and expressed concern regarding the broad nature of the ordinance. The City Attorney also questioned the necessity for an emergency ordinance. The subcommittee concurred that a project-by-project approach could accomplish the same goal as a comprehensive ordinance, as long as the process does not delay the construction of new housing in Morgan Hill. The subcommittee was also sensitive to those projects with impending Measure P deadlines and loan commitments. Therefore, in order to expedite the process, the Subcommittee is requesting the Council to provide direction regarding the following matters:

1. Does Council support the use of zero lot line or reduced setback detached dwellings in place of attached dwellings as a solution to the attached housing issue?
2. If Council supports the zero lot line or reduced setback detached dwellings solution, does the Council have a preference as to which approach to take to allow for these types of housing units (i.e., comprehensive approach or project-by-project approach)?

Based on Council direction, a draft ordinance will be presented to the Commission at the Oct. 14 meeting.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 15

Prepared By:

Associate Planner

Approved By:

CDD Director

Submitted By:

City Manager

Attachment A

**PROS AND CONS FOR
COMPREHENSIVE ORDINANCE VS. PROJECT-BY-PROJECT APPROACH**

	COMPREHENSIVE ORDINANCE	PROJECT-BY-PROJECT APPROACH
PROS	<ol style="list-style-type: none">1. Shorter approval process - A comprehensive ordinance would grant a blanket approval to allow zero lot line and reduced setback detached units in all projects containing ownership attached housing.	<ol style="list-style-type: none">1. A project-by-project approach would allow the City to review the specific needs of each individual project.2. This approach would allow the City to focus on the few select projects with impending Measure P deadlines and loan commitments.3. The City could monitor the successes and failures of zero lot line and reduced setback detached units as they are built, and use this information to review subsequent requests for zero lot line and reduced setback detached units.4. If the use of zero lot line and reduced setback detached units proves to be successful, the City could, at a later date, adopt a comprehensive ordinance.
CONS	<ol style="list-style-type: none">1. Some projects containing ownership attached housing can afford to pay the higher insurance premiums. A comprehensive ordinance would allow developers to convert all ownership attached housing into zero lot line or reduced setback detached dwellings, regardless of need.2. It is difficult to anticipate all possible scenarios; therefore, a comprehensive ordinance may fail to address future issues.3. Strong legal findings are required to substantiate a need for a comprehensive ordinance.4. It is unknown how long insurance issues will impact local development. If the City adopts a comprehensive ordinance and the issues persist, the City would need to extend the ordinance; if the issues are resolved, then the ordinance would need to be repealed or allowed to continue until its sunset date.5. The ordinance is being fast tracked due to impending deadlines/commitments of only a select few projects.	<ol style="list-style-type: none">1. Longer approval process – A project-by-project approach would require separate applications and review for each individual project.



CITY COUNCIL *STAFF REPORT*

MEETING DATE: October 1, 2003

Agenda Item # 16

Prepared By:

BAHS Manager

Approved By:

BAHS Director

Submitted By:

Executive Director

ART IN PUBLIC PLACES

RECOMMENDED ACTION(S): Provide direction on how to proceed with the development of an art in public places policy.

EXECUTIVE SUMMARY:

On August 23, 2003, the City Council held a workshop to discuss the issues related to developing an art in public places policy. At the workshop, the Council decided that it wants an art in public places policy and directed staff to bring back the item for discussion at a future Council meeting.

Attached are three tables that are intended to provide the Council with a basis for discussion and decision-making. Table A shows the spectrum of options available to the Council. Tables B and C narrow down the options for the Council should they choose to pursue a policy for public projects only, or both public and private projects. Staff intends to review these tables as part of the presentation. The critical issues for the Council to decide include:

- Should the policy pertain to public or private projects, or both?
- Where should public art be located?
- Should the policy apply only to large projects?
- Should all projects be required to produce art or can a project contribute to an art fund?
- Should there be a percent for art requirement? If so, what percent?
- What type of selection control does the City want?
- What are the possible funding sources?
- Should public art be encouraged or required?

With further direction on these issues, staff will proceed to develop an art in public places policy.

FISCAL IMPACT: None at this time.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 1, 2003

Agenda Item # 17

Prepared By:

**Council Services &
Records Manager/
City Clerk**

Submitted By:

City Manager

COUNCIL DISCUSSION OF ADVISORY COMMITTEE AND COMMISSION COMMUNICATIONS AND REPORTING RELATIONSHIPS, INCLUDING ROLE OF COUNCIL LIAISONS

RECOMMENDED ACTION: Council Discussion and Direction

EXECUTIVE SUMMARY:

Council Member Tate requested that staff agendaize discussion of advisory committee/commission communications and reporting relationships, including the role of Council liaisons. His request is based on the comments and concerns expressed by the Senior Advisory Committee members at their September 2, 2003 meeting relating to the indoor recreation center and the nutrition program. Council Member Tate would like to share the Senior Advisory Committee comments and concerns with the Council. Staff is in the process of completing the staff report relating to the nutrition program and will return with this item on October 15, 2003.

Council Member Tate recommends discussion on improving communications and reporting relationships with the Council's committee and commissions and that the discussion of the nutrition program return to the Council on October 15 to further address the Senior Advisory Committee's concerns.

FISCAL IMPACT: No Fiscal Impact.



CITY COUNCIL/REDEVELOPMENT
AGENCY MEETING DATE: October 1,
2003

Agenda Item # 18

Approved By:

BAHS Director

Submitted By:

Executive Director

OFF-SITE IMPROVEMENTS FOR DAY WORKER CENTER

RECOMMENDED ACTION(S): Direct staff to negotiate and prepare the necessary agreements, not-to-exceed \$175,000, to fund the off-site improvements for the Day Worker Center and bring such agreements to the Agency for consideration.

EXECUTIVE SUMMARY: Several months ago, the City Council/Redevelopment Agency approved a loan of \$350,000 and a triple façade grant for Weston-Miles Architects (WMA) to renovate the Isaacson Granary into 10,000 sq. ft. of commercial/office space. As part of that project, WMA was required to allow the Day Worker Center to operate on the property north of the Granary.

Attached are cost estimates to construct the Day Worker Center (Center). WMA estimates that the preliminary cost to develop the Center including on-site improvements will cost about \$110,000 not including any construction contingencies. The Center has \$50,000 in CDBG funds allocated to the project for the on-site improvements. The Day Workers Committee (Day Workers) indicates the balance of the funds will be generated from a combination of sources including the deferral of some improvements such as the decking, fundraisers, and in-kind donations and services.

However, these costs do not include any off-site improvements. WMA and the Day Worker Center indicate that they did not anticipate nor budget for the cost of off-site improvements. Although the Center is an interim use, the municipal code does not allow for exemptions for interim uses and requires that the development install curb, sidewalk, and gutter. Our estimated costs for the off-site improvements are about \$175,000. This cost may be lower if WMA can demonstrate to the satisfaction of the City that the site can drain properly without a storm drain in Depot Street. Without the offsite improvements, the Day Worker Center will be unable to proceed with their development which was one of the key reasons for approving the Granary project in the first place

WMA and the Day Workers are requesting that the Agency provide the funds for the off-site improvements. However, the parties have yet to agree on which portion of the \$175,000 each party would be responsible for. Depending on the results of their discussion, the Agency will need to apportion funds between WMA and the Day Workers. WMA will agree to reimburse the Agency for its share when they pull building permits for the permanent development of the property. The Day Workers would most likely need to receive an unsecured loan or grant from the City/Agency to fund their portion of the costs. One option the City can explore is to determine if additional CDBG funds can be allocated to the project, but this may impact other CDBG funded projects or delay the project until July 2004.

We are requesting the flexibility to negotiate and structure the agreements as needed because at this time it is unclear which portion of the \$175,000 the parties would be responsible for. This transaction will require agreements and other related documents with WMA and the Day Workers to fund the improvements. As a result, these agreements will need to be brought to the Agency for consideration at a later meeting. However, staff wanted to receive direction to proceed with the request before dedicating the time and effort needed to prepare the documents.

FISCAL IMPACT: Monies are available in the BAHS Economic Development budget.